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**To:** Microsoft ATR  
**Date:** 1/28/02 7:27am  
**Subject:** Microsoft Settlement

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To the Honorable Court:

I find it doubtful that the currently proposed remedies for the issues of the Microsoft case will succeed in meeting the ruling of the Court of Appeals as to what "a remedies decree in an antitrust case must seek".

Herein two additional remedies are proposed which I believe substantially improve the resolution of this case. Following the statement of the proposals, are comments on the motivation and justification of the proposals, which in turn are followed by some details of the proposal. Since my experience in legal matters is very limited, I hope that others who are more experienced will see merit in the general nature of these proposals and refine them to a form that is suitable for use in this matter.

==== PROPOSAL SUMMARIES ====

Proposal #1: Jump starting the strangled OEM infrastructure for marketing non Microsoft operating systems by requiring Microsoft to pay for it's creation.

Proposal #2: To reduce the probability of future illegal monopolization resolve that the only contractual terms between Microsoft and other parties that can be litigated and enforced in US courts are those that have been made widely and publically available adequately prior to the violation of terms in question.

==== PROPOSAL RATIONAL ====

Proposal #1 is a necessary addition to the proposed remedies as it is the only way to "deny to the defendant the fruits of its statutory violation". As long as it is essentially impossible to purchase an intel based desktop computer system with a non microsoft operating system (such as BeOS, Linux, \*BSD), particularly from a major hardware vendor which has long been a problem for both my private activities as a computer hobbieist and my professional activities as a computer support provider, as long as this situation remains, then Microsoft is enjoying the fruits of its past illegal monopolistic behaviour. Normally if merchant X entered merchant Y's place of business and destroyed merchant Y's merchandise we would say to merchant X "not only must you not do that again, you must renumerate merchant X for the cost of undoing the damage you did, so that he can return to business". Why then, if merchant X has carried out this destructive behaviour repeatedly for years would we only enjoin merchant X to stop that behaviour and tell merchant Y that they must bear the cost of the damage they have received with out renumeration?

Do the OEM's actually find the current proposed remedies convincing enough that they are willing to make the investment to be able to ship computers with non Microsoft operating systems? In evaluating the proposed remedies, the court should ask the OEM's this question. I suspect that in the absence of the addition of proposal #1 they will not, and hence the proposed remedies will do little to change the current market situation for consumers of computer systems. It is likely more must be done.

Proposal #2 is a necessary addition to the proposed remedies as it is the only way to "ensure that there remain no practices likely to result in monopolization in the future". Microsoft's track record in creating innovative ways to bully other businesses is sufficiently well established that merely (narrowly) listing past transgressions and saying "don't do that again" clearly won't prevent them from undertaking new bullying in unlisted areas, particularly new markets. It is in everyone's best interest, including Microsoft's, that they grow out of this behaviour. It has long been understood that the way to minimize egregious bullying behaviour is to require all transactions occur in public ... that is why we put lights by ATMs, ... and why the US constitution goes to some length to require that governmental proceedings must not be behind closed doors. Should we abandon this sound principle here, when it is most needed?

I believe that neither of these additional proposals (as elaborated below) impose undue burden on Microsoft. I believe they are necessary to provide relief and restitution to all of us living in a world stunted by Microsoft's past practices. I believe that these additions will strengthen both the US economy, by freeing it from over dependence on one provider of computer services, and also strengthen Microsoft, by encouraging it to stop spend so much of it's energies on destructive practices, trying to keep the rest of the world down, and rechannel those energies to new constructive activities.

==== PROPOSAL DETAILS ====

Proposal #1: Jump starting the strangled OEM infrastructure  
for marketing non Microsoft operating systems  
by requiring Microsoft to pay for it's creation.

The goal is to rapidly create an OEM infrastructure that co-markets with the current Microsoft OS based computer systems, computers that - on the same hardware, out of the box - run non-Microsoft operating systems, both in addition to and instead of the Microsoft OS ... at minimal additional cost.

The deliverable is that it be possible to purchase from major OEMs both individually and in large quantity, standard hardware that out of the box

- a) directly boots into at least one non Microsoft operating system
- b) directly dual boots into at least one non Microsoft operating system in a manner easily managed by a novice computer user.
- c) directly multi boots in to at least two different non Microsoft operating systems in a manner easily managed by a novice computer user.

Option (a) should be available in (say) 4 months, option (b) in (say) 6 months and option (c) in (say) 8 months.

One key issue is ensuring that such an infrastructure is not unnaturally re-strangled by Microsoft (or any other party). Although the effectiveness of the proposed remedies to 'unfetter a market from anticompetitive conduct' is doubtful, as a hypothetical, lets take them as adequate and pass on to the other key issue which does not appear to be addressed in the proposed remedies.

The other key issue is the cost of creating this infrastructure.

We propose that Microsoft pay for the creation of this infrastructure. This should be viewed in a remunerative rather than a punitive light. This should be viewed as an aid to recovering what would have been had Microsoft not abused it's monopoly.

There are at least two different types of cost involved:

- a) the one time costs faced by the OEMs in creating an infrastructure that permits them to ship hardware with a variety of operating systems.
- b) the costs (both one time and on going ) of ensuring the other operating systems to be shipped work on the hardware that is shipped

which suggests at least two different levies on Microsoft assets:

- a) Microsoft should be assessed a one-time, non-punative, fine of some appropriate amount (perhaps US\$100,000,000), to be disbursed by neutral, knowledgeable trusteeship, over a short period of time (perhaps 9 months), to the OEMs, for the sole purposes of implementing the proposed infrastructure, and getting the alternate operating systems working on the shipping hardware.
- b) A fee, to be paid by Microsoft, to a neutral trusteeship, is to be assessed on every copy of Microsoft operating system shipped, for some intermediate period of time (perhaps 3 years), and is to be used for the sole purpose of underwriting the work of keeping the alternative operating systems operating the rapidly mutating hardware shipped by

the OEMs. The level of the fee will be reviewed and adjusted every few months.

Thought might also be given to levying a fine on Microsoft to be used as a startup investment to bring BeOS back to the market place.

Note that the aim is to bring in to existence what we most likely would have had, had Microsoft not strangled it. The aim is not to demand that Microsoft underwrite the system beyond some reasonable incubation period.

There are many details to be worked out...

- 1) Who chooses what operating systems are available? It is preferable that many choices be made available, and let the customer choose. Personally I'd like to be able to choose at least one linux, one \*BSD, and BeOS.
- 2) Who provides the boot loader? Clearly this should \*not\* be in the hands of Microsoft. It is to be hoped that the industry can spec an fully open standard that Microsoft then be compelled to comply with.
- 3) What will prevent Microsoft (or other vendors) from having their operating system damage other systems installed (over writing boot blocks, etc). Perhaps large punitive damages if this occurs would be appropriate.
- 4) How to ensure that Microsoft does not force the rate of (gratuitus) hardware mutation so high (by rapidly changing what hardware they support and don't support) that other OS providers are exhausted by trying track it? In part by steeply raising the above mentioned fee imposed on each shipped Microsoft OS for underwriting this work on other OS. And perhaps in part by additional legal remedies.
- 5) How to avoid having two hardware systems emerge ... one that can not run anything but Microsoft's OS, and one that runs everything else?
- 6) Note that Microsoft must have no say in how the various moneys are disbursed ... I don't think we can yet trust Microsoft to not trojan such an effort.
- 7) How to avoid building the proposed infrastructure in a way the Microsoft ends up controlling? Perhaps Microsoft must be explicitly forbidden to participate in the infrastructure development. Note care should be used to avoid building with pieces that Microsoft can end-of-life there by gutting the infrastructure shortly after it is built.

Proposal #2: To reduce the probability of future illegal monopolization resolve that the only contractual terms between Microsoft and other parties that can be litigated and enforced in US courts are those that have been made widely publically available adequately prior to the violation of terms in question.

The goal here is to create an environment where it is much harder for Microsoft to engage in the sort of divide and conquer bullying tactics of the past.

This remedy should be in force for ten years. At which point it should be reviewed and extended if need be.

One way to insure public availability is to levy an annual fine on Microsoft that a neutral trusteeship would use to maintain a website with all published Microsoft contracts. The website must be well connected and widely accessible with a wide range of standards compliant web browsers in an anonymous manner (no registration, etc).

It is very important that all the information be available to everyone. Based on my experiences at the retail computer level, I believe that many small business would have choosen other products years ago, and hence not be trapped in the current gratuitous upgrade intensive, insecure, computing environment they now find themselves in, if they had know what sort of business tactics Microsoft was using. By making this information open to all, the public and the markets can police Microsofts future behaviour, rather putting that burden soley, and inappropriately, on the courts.

To guard against obsfuscation, vagueness, and excessive subtlety the above fee should also be disbursed periodically to a variety of independent evaluators who should be charged with evaluating the clarity of the contracts, and the degree to which several innocuous interlocking contracts can establish monopolistic dominance. Of particular concern are terms such as "... vendors in good standing" which leaves the meaning of the contract entirely up to Microsoft, and are a particular effective form of bullying. Appropriate punitive fines should be levied if such Microsoft is found to be engaging in such evasive and injurious practices.

==== CLOSING REMARKS ====

I believe the above to be necessary in resolving the Microsoft case. However it most likely will not be sufficient.

I hope that the court finds something of use in these remarks.